IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMARY SUIT NO.1136 OF 2004

The Padmashali Education Society. ...Plaintiff.
Vs.
Arvind Yashwant Gupte & Anr. ...Defendants.

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Mrs.Shakuntala Joshi for the Plaintiff.
None for the Defendants.

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CORAM : DR.D.Y.CHANDRACHUD, J.
16th April 2007.

P.C.:

The suit under Order 37 of the Code of Civil Procedure, 1908 is based on a Memorandum of Understanding executed between the First Defendant and the Plaintiff. In pursuance of the Memorandum of Understanding the Plaintiff advanced a sum of Rs.7 lakhs and clause 10 thereof states as follows :

> "It is further agreed by and between the parties that if the Vendor and Developer fails either to get released the area under reservation for Recreation Ground or to allot area from Residential Zone for construction of a Community Hall-cum-Welfare Centre on or before 31-12-2001, the vendor and Developer shall return the said amount of Rs.7,00,000 (Rupees seven lacs only) of earnest money already received by him from the purchaser with 18% interest per annum from the date of actual payment within a period of ninety days from 31-12-2001 without any excuse."

At the hearing of the Summons for Judgment, the Learned Single Judge recorded that it was an admitted position that the premises as agreed under the Memorandum of Understanding had not been made available to the Plaintiff. The Defendants were liable to refund the amount of Rs.7 lakhs. The Second Defendant had issued a cheque in the amount of Rs.7 lakhs which was dishonoured.

A conditional order was passed on 5th October 2005 granting leave to defend the suit to the Defendants subject to deposit of an amount of Rs.10 lakhs. The Defendants have failed to comply with the condition and a certificate of non deposit issued by the Master and Assistant Prothonotary on 13th April 2007 has been placed on the record.

The Defendants have been served with the writ of summons. An affidavit of service has been filed. A compilation of the original documents on the basis of which the suit has been instituted has also been tendered on the record. The claim of the Plaintiff is duly established. Even otherwise, the Defendants having failed to enter appearance, the Plaintiff would be entitled to a decree as prayed under the provision of Order 37. The suit shall accordingly be decreed in terms as prayed save and except with

the modification that the Plaintiff shall be entitled to interest at the rate of 9% per annum from the date of the institution of the suit until the date of the decree and at the same rate from the date of the decree until payment or realization.

On the request of Counsel appearing on behalf of the Plaintiff, the original documents are permitted to be returned back to the Learned Advocate for the Plaintiff against tendering of photo copies which shall be duly verified with the originals by the Registry before returning the originals back to the learned Advocate.

Refund of Court fee, if any, as per rules.

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